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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18

19 **Belen Acevedo,**

20 Plaintiff,

21 v.

22 **HGGA Promenade, L.P.**, a
23 California Limited Partnership;
Marshalls of CA, LLC, a Virginia
24 Limited Liability Company; and
Does 1-10,

25 Defendants.

26 **Case No.**

27 **Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

28 Plaintiff Belen Acevedo complains of HGGA Promenade, L.P., a
California Limited Partnership; Marshalls of CA, LLC, a Virginia Limited
Liability Company; and Does 1-10 (“Defendants”), and alleges as follows:

29
30 **PARTIES:**

31 1. Plaintiff is a California resident with physical disabilities. She suffers
32 from multiple sclerosis. She uses a walker and a scooter for mobility.
33 2. Defendant HGGA Promenade, L.P. owned the real property located at

1 or about 9939 Chapman Avenue, Garden Grove, California, in January 2019.

2 3. Defendant HGGA Promenade, L.P. owns the real property located at or
3 about 9939 Chapman Avenue, Garden Grove, California, currently.

4 4. Defendant Marshalls of CA, LLC owned Marshalls located at or about
5 9939 Chapman Avenue, Garden Grove, California, in January 2019.

6 5. Defendant Marshalls of CA, LLC owns Marshalls ("Store") located at or
7 about 9939 Chapman Avenue, Garden Grove, California, currently.

8 6. Plaintiff does not know the true names of Defendants, their business
9 capacities, their ownership connection to the property and business, or their
10 relative responsibilities in causing the access violations herein complained of,
11 and alleges a joint venture and common enterprise by all such Defendants.
12 Plaintiff is informed and believes that each of the Defendants herein,
13 including Does 1 through 10, inclusive, is responsible in some capacity for the
14 events herein alleged, or is a necessary party for obtaining appropriate relief.
15 Plaintiff will seek leave to amend when the true names, capacities,
16 connections, and responsibilities of the Defendants and Does 1 through 10,
17 inclusive, are ascertained.

18

19 **JURISDICTION & VENUE:**

20 7. The Court has subject matter jurisdiction over the action pursuant to 28
21 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
22 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

23 8. Pursuant to supplemental jurisdiction, an attendant and related cause
24 of action, arising from the same nucleus of operative facts and arising out of
25 the same transactions, is also brought under California's Unruh Civil Rights
26 Act, which act expressly incorporates the Americans with Disabilities Act.

27 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
28 founded on the fact that the real property which is the subject of this action is

1 located in this district and that Plaintiff's cause of action arose in this district.
2

3 **FACTUAL ALLEGATIONS:**

4 10. Plaintiff went to the Store in January 2019 to shop.

5 11. The Store is a facility open to the public, a place of public
6 accommodation, and a business establishment.

7 12. Paths of travel are one of the facilities, privileges, and advantages
8 offered by Defendants to patrons of the Store.

9 13. The path of travel leading to the women's restroom was less than 36
10 inches in width. In fact, the path of travel was no more than 24 inches wide due
11 to chairs and stools that are kept there.

12 14. Currently, the path of travel leading to the women's restroom is less than
13 36 inches in width.

14 15. Restrooms are another one of the facilities, privileges, and advantages
15 offered by Defendants to patrons of the Store.

16 16. The disposable toilet seat cover dispenser was mounted on the wall.
17 Defendants placed a trash can in front of the disposable toilet seat cover
18 dispenser, which served as an obstruction to plaintiff.

19 17. Maneuvering clearances are also one of the facilities, privileges, and
20 advantages offered by Defendants to patrons of the Store.

21 18. Unfortunately, the Store places a large trash can in the women's
22 restroom, such that it blocks wheelchairs users from exiting the restroom
23 without great difficulty. There is a front approach to the pull side of a swinging
24 exit door but there are only a few inches of clearance to the strike side of the
25 door.

26 19. Defendants have failed to maintain in operable working condition those
27 features of facilities and equipment that are required to be readily accessible to
28 and usable by persons with disabilities at the Subject Property.

1 20. Plaintiff personally encountered these barriers.

2 21. This inaccessible facility denied the plaintiff full and equal access and
3 caused her difficulty, discomfort, and embarrassment.

4 22. Plaintiff will return to the Store to avail herself of its goods or services
5 once the barriers are permanently removed. If the barriers are not removed,
6 the plaintiff will face unlawful and discriminatory barriers again.

7 23. The defendants have failed to maintain in working and useable
8 conditions those features required to provide ready access to persons with
9 disabilities.

10 24. Given the obvious and blatant nature of the barriers and violations
11 alleged herein, the plaintiff alleges, on information and belief, that there are
12 other violations and barriers on the site that relate to her disability. Plaintiff
13 will amend the complaint, to provide proper notice regarding the scope of this
14 lawsuit, once she conducts a site inspection. However, please be on notice that
15 the plaintiff seeks to have all barriers related to her disability remedied. See
16 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
17 encounters one barrier at a site, she can sue to have all barriers that relate to
18 her disability removed regardless of whether she personally encountered
19 them).

20

21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
22 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24 25. Plaintiff re-pleads and incorporates by reference, as if fully set forth
25 again herein, the allegations contained in all prior paragraphs of this
26 complaint.

27 26. Under the ADA, it is an act of discrimination to fail to ensure that the
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone
2 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
3 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,
5 or procedures, when such modifications are necessary to afford
6 goods, services, facilities, privileges, advantages, or
7 accommodations to individuals with disabilities, unless the
8 accommodation would work a fundamental alteration of those
9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
12 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
13 Appendix “D.”
- 14 c. A failure to make alterations in such a manner that, to the
15 maximum extent feasible, the altered portions of the facility are
16 readily accessible to and usable by individuals with disabilities,
17 including individuals who use wheelchairs or to ensure that, to the
18 maximum extent feasible, the path of travel to the altered area and
19 the bathrooms, telephones, and drinking fountains serving the
20 altered area, are readily accessible to and usable by individuals
21 with disabilities. 42 U.S.C. § 12183(a)(2).

22 27. Clear floor space that allows a forward or a parallel approach by a person
23 using a wheelchair shall be provided at controls, dispensers, receptacles, and
24 other operable equipment. 2010 Standards § 309.2.

25 28. Here, the failure to provide such floor space is a violation of the law.

26 29. The minimum clear width of an accessible route shall be 36 inches.
27 2010 Standards § 403.5.1.

28 30. Here, the failure to provide an accessible path of travel to the restroom

1 is a violation of the ADA.

2 31. When an entrance or exit requires a front approach to the pull side of a
3 swinging door, there must be a minimum of 18 inches clear floor space to the
4 strike side of the doorway. 2010 Standards § 404.2.4.1.

5 32. Here, the failure to provide that strike side clearance is a violation.

6 33. The Safe Harbor provisions of the 2010 Standards are not applicable
7 here because the conditions challenged in this lawsuit do not comply with the
8 1991 Standards.

9 34. A public accommodation must maintain in operable working condition
10 those features of its facilities and equipment that are required to be readily
11 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

12 35. Here, the failure to ensure that the accessible facilities were available
13 and ready to be used by the plaintiff is a violation of the law.

14

15 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
16 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
17 Code § 51-53.)

18 36. Plaintiff repleads and incorporates by reference, as if fully set forth
19 again herein, the allegations contained in all prior paragraphs of this
20 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
21 that persons with disabilities are entitled to full and equal accommodations,
22 advantages, facilities, privileges, or services in all business establishment of
23 every kind whatsoever within the jurisdiction of the State of California. Cal.
24 Civ. Code § 51(b).

25 37. The Unruh Act provides that a violation of the ADA is a violation of the
26 Unruh Act. Cal. Civ. Code, § 51(f).

27 38. Defendants’ acts and omissions, as herein alleged, have violated the
28 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s

1 rights to full and equal use of the accommodations, advantages, facilities,
2 privileges, or services offered.

3 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
4 discomfort or embarrassment for the plaintiff, the defendants are also each
5 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
6 (c).)

7

8 **PRAYER:**

9 Wherefore, Plaintiff prays that this Court award damages and provide
10 relief as follows:

11 1. For injunctive relief, compelling Defendants to comply with the
12 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
13 plaintiff is not invoking section 55 of the California Civil Code and is not
14 seeking injunctive relief under the Disabled Persons Act at all.

15 2. Damages under the Unruh Civil Rights Act, which provides for actual
16 damages and a statutory minimum of \$4,000 per occasion.

17 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
18 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

19
20 Dated: February 12, 2019 CENTER FOR DISABILITY ACCESS

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23 By:
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Chris Carson, Esq.
Attorney for plaintiff